IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.MC.No. 3065 of 2007()

CC.695/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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PETITIONER: COMPLAINANT

AMBIKA, D/O. SREEDHARA PANICKER,
KALARIKKAL HOUSE, MULLAKKARA DESOM,
OLLUKKARA VILLAGE, THRISSUR DISTRICT.

BY ADV. SRI.A.C.DEVY

RESPONDENTS: ACCUSED & STATE

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1. MANOJ @ MANOJ KUMAR, AGED 38 YEARS,
S/O. LATE SANKARA KURUP, PERINJERI KALARIKKAL
HOUSE, VATTANATHRA DESOM, AMBALLUR VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

2. UNNIKRISHNAN, AGED 53 YEARS, S/O. LATE
SANKARA KURUP, PERINJERI KALARIKKAL HOUSE,
VATTANATHRA DESOM, AMBALLUR VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

3. THE STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.LIJO GEORGE
PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/10/2007 ALONG WITH CRMC.NOS.3066 & 3067 OF 2007, T HE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.NoS. 3065, 3066 & 3067 of 2007

Dated this the 5th day of October, 2007

O R D E R

Crl.M.C.No.3067 of 2007

The petitioner is the defacto complainant in a prosecution under Section 498 A I.P.C. She had filed a private complaint which was referred to the police under Section 156(3) Cr.P.C. After completing the investigation, final report was filed arraying respondents 1 and 2 and another accused, who had subsequently expired, as accused. The disputes between the parties have now been settled. The petitioner and her husband, the 1st respondent herein are residing together now after settling all their disputes harmoniously. In these circumstances, the petitioner has come to this Court with the prayer that the prosecution against respondents 1 and 2 pending before the Judicial Magistrate of the First Class, Irinjalakkuda as C.C.No.695 of 2004 may be quashed.

2. Notice was given to the learned Public Prosecutor . Respondents 1 and 2 have also entered appearance through counsel. All of them accept the prayer of the petitioner. I am satisfied that the petitioner has willingly and voluntarily settled the dispute with

respondents 1 and 2 and they have resumed co-habitation after settling all their disputes. She has compounded the offence allegedly committed by respondents 1 and 2. If legally permissible, I am satisfied that the composition/settlement can be accepted and premature termination of the prosecution can be brought about.

3. But the offence under Section 498 A I.P.C is not legally compoundable. The counsel for the petitioner and respondents 1 and 2, in these circumstances, pray that the dictum in **B.S.Joshy v. State of Haryana** [A.I.R (2003) SC 1386] may be invoked to bring about premature termination of the proceedings. The said decision is authority for the proposition that the interests of justice may at times transcend the interests of mere law and on such occasions, the stipulation of Section 320 Cr.P.C cannot fetter the sweep, width and amplitude of the inherent powers under Section 482 Cr.P.C.

4. I am satisfied that this is an eminently fit case where the prayer of the petitioner can be accepted and the proceedings against respondents 1 and 2 brought to premature termination.

Crl.M.C.NOs.3066 & 3067 of 2007

5. The petitioners in these cases face indictment in two separate prosecutions, both pending before the Judicial Magistrate of the First Class, Irinjalakuda. All offences alleged are compoundable, it

is submitted. Parties have settled their disputes also. It is prayed that powers under Section 482 Cr.P.C may be invoked to bring to premature termination the prosecutions pending against the petitioners. The disputes in all these Crl.M.Cs are inter connected, it is submitted.

6. When the offences are compoundable and there has been a proper composition of the offences by the victim, it is for the parties to approach the Magistrate concerned under Section 320 Cr.P.C to accept the composition. I am unable to agree that there are any circumstances justifying the invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. What can be achieved under Section 320 Cr.P.C need not be accomplished by invoking the powers under Section 482 Cr.P.C. That would be a bad precedent. This Court cannot be saddled with the responsibility of bringing to premature termination such compoundable offences compounded in respect of which the Magistrate concerned is legally competent to grant the requisite relief. These Crl.M.Cs therefore only deserve to be dismissed with the observation that the petitioners can approach the Magistrate concerned under Section 320 Cr.P.C to accept the composition.

7. In the result:

a) Crl.M.C.No.3065 of 2007 is allowed. C.C.No.695 of 2004 pending before the Judicial Magistrate of the First Class, Irinjalakuda against respondents 1 and 2 is hereby quashed;

b) Crl.M.C.Nos.3066 & 3067 of 2007 are dismissed with the observation that the petitioners must approach the learned Magistrate with the prayer for composition under Section 320 Cr.P.C. Needless to say, the learned Magistrate must dispose of such application as expeditiously as possible - on the date of application itself, unless there be any insurmountable impediments.

Hand over a copy of this order to the learned counsel for the petitioners.

(R.BASANT, JUDGE)

rtr/-